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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/549,551
Filing Date: September 19, 2005
Appellant(s): CAROEN ET AL.

Ryan E. Anderson
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 18, 2009 appealing from the Office action mailed December 17, 2008.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is adequate.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is adequate. It lists Grounds of Rejection I-IV, with Ground I being the first rejection for claims 5, 10-12 and 24 under 35 U.S.C. § 103(a) as being unpatentable over Tremblay in view of Nicholas. However during the argument portion for Grounds I on pages 4-10 of the brief, appellant strays off the subject a bit by including discussions of all of six references of all the rejections, whereas the first rejection uses only the Tremblay and Nicholas references. Appellant's argument is that the Nicholas reference is non-analogous art and cannot be combined with the Tremblay reference.

The appellant's statement of the grounds for rejection also lists Grounds II-IV which are directed to the three subsequent rejections. However the arguments used against Grounds II and III rely upon the first grounds for the rejection of independent claim 24 being overcome and also restate the same argument used against the first grounds of rejection, i.e., that the Tremblay reference is the only pertinent reference, and that every other reference is non-analogous. Grounds II and III are not fully separately argued, as they rely on claim 24 for allowability, or rely on the same arguments as used for claim 24 for allowability. To some degree, all of these claims stand or fall together.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

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(8) Evidence Relied Upon

3,236,540	Berton et al	2-1966
3,272,557	Nicholas	9-1966
4,319,769	Compeau et al	3-1982
4,655,477	Takada	4-1987
5,373,915	Tremblay	12-1994
5,549,356	Gray	8-1996

(9) Grounds of Rejection

The following grounds of rejection are applicable to the appealed claims:

Claims 5, 10-12 and 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Tremblay in view of Nicholas. Figure 6 of Tremblay shows the basic claimed combination of a stairlift chair comprising:

a chair having a front, back and two spaced lateral sides;

means for attaching the chair with a stairlift rail; and

a containment device (122), the containment device comprising a pair of fixing points mounted the spaced sides of the chair and a length of seat belt.

Tremblay varies from claim 24 by not disclosing that the seat belt (122) has a reel for retracting the seat belt. Nicholas shows a seat belt comprising:

a fixing point (26) mounted on or adjacent one of the spaced sides (of the seat);

a reel carrier having a housing (40) sized and shaped to locate comfortably within a users hand and having a fixing component (41) integral with the housing (40), which fixing component is engageable with the fixing point (26);

a reel rotatably mounted in the reel carrier;

a length of belt (42) wound onto, and fixed at one end to, the reel and having an opposite free end, wherein the opposite free end is fixed on or adjacent to the other of the spaced sides, and wherein said reel carrier is displaceable laterally between the spaced sides to position the fixing component (41) for engagement and is engageable with the fixing point (26; the retractor may travel with the belt, as to be displaceable, see the last three lines of column 2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made by applicant to modify the seat belt of Tremblay by providing it with a retracting reel, as to have the belt retractable for adjustability and for non-use storage, as taught by Nicholas. The containment belt of Nicholas has a spring retraction means, see column 3, lines 3-5, as recited in claim 5. The stairlift chair of

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Tremblay includes two spaced armrests, the free end of the belt of Nicholas would be attached at one of the armrests, with the reel carrier being removably connectable at the other of the armrests, as recited in claim 10. The connections are close to the forward edges of the armrests, as recited in claim 11, as to be within the sight of a stairlift user, as recited in claim 12.

Claims 3 and 4 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Tremblay in view of Nicholas, as applied above to claim 24, and further in view of Gray. Tremblay as modified shows the basic claimed stairlift chair and seat belt. It varies from the claims by not having locking means to lock the reel as an act of engaging the fixing component. Gray shows a similar moving reel seat belt with a locking means (actuator assembly 82) operable to lock the position of the belt by the act of engaging the reel carrier to the fixing point (44). It would have been obvious to one of ordinary skill at the time the invention was made by applicant to provide the reel of Nicholas with an automatic reel lock, to lock the reel and belt length upon fixing it in position, as taught by Gray.

Claims 7 and 8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Tremblay in view of Nicholas, as applied above to claim 24, and further in view of Compeau or Takada. Tremblay taken with Nicholas shows the basic claimed combination of a stairlift chair and a reeled seat belt. It varies from the claims by not having the exit of the reel carrier formed with a supporting member. Compeau shows a seat belt system with a belt slot (68) at the reel housing exit. Takada shows a seat belt system with a guide sheath (34) at the reel housing exit. It would have been obvious to one of ordinary skill in the art at the time the invention was made by applicant to modify the seat belt of Tremblay by providing the reel housing with a guide sheath, to guide the belts movements and prevent chaffing, as taught by Compeau, or as taught by Takada.

Claims 13 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Tremblay in view of Nicholas, as applied above to claim 24, and further in view of Berton et al. Tremblay taken with Nicholas shows the basic claimed combination of a stairlift chair and a reeled seat belt. It varies from the claims by not having a shoulder strap. Berton et al shows a similar seat belt system with a should strap (21). It would have been obvious to one of ordinary skill in the art at the time the invention was made by applicant to modify the seat belt of Tremblay by providing it with a shoulder belt, for better restraint and increased passenger safety, as taught by Berton et al.

(10) Response to Argument

Appellant's arguments with respect to the Grounds of Rejection I, begin on page 4 of the brief and state that the "Examiner's rejections of the claims include the use of a reference in the art of stairlifts (e.g.

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Tremblay) combined with several references (e.g. Nicholas and other tertiary references) showing seat belts for automobiles” as to argue that the rejections are combining non-analogous art. However the rejection being discussed here is starting with a known seat belt environment, the seat belt of Tremblay which extends between the arm rests of a stairlift chair, and adds a conventional seat belt feature, a seat belt with a retraction reel, for reasons which would have been obvious to one of ordinary skill in the art at the time the invention was made by applicant. One of ordinary skill in this art, the chairlift chair art and/or the associated seat belt art, would have knowledge of related chairs or related seat belts. Problems solved by elements within the related chairs or seat belts would be readily be incorporated into the chairlift seat art.

Appellant argues at the middle of page 4 of the brief that “The Examiner's conclusion oversimplifies the functional requirements of the two types of seat belts, and thus fails to consider the practical realities, differences, and the arts as a whole”. However the combination made within the rejection of claim 24 is placing a retractable reel on a seat belt. Retractable reels for seat belts are present on every modern automobile. They allow the seat belt to be adjusted. The alleged oversimplified conclusion could be based on the fact everyone ever using a seat belt has used a seat belt with a retractable reel. One of ordinary skill in the stairlift chair art probably has ordinary skill in the “sitting in a car art” and has used a seat belt. The use of a retractable reel for one type of seat belt would yield predictable results when applied to another type of seat belt.

Appellant argues at the bottom of page 4 of the brief that “stairlift chairs are used by persons who have some degree of infirmity but who generally desire to maintain the greatest degree of independence possible” and that “the automobile safety belts of the secondary reference Nicholas and tertiary references Berton and Takada and the child safety seats of the further tertiary references Gray and Compeau are intended to provide restraint systems for automotive seats.”. However this portion of the brief is directed to the first grounds of rejections for independent claim 24 under 35 U.S.C. § 103(a) as being unpatentable over Tremblay in view of Nicholas. The discussion of the other four references is inappropriate for this portion of the brief. This portion is only addressing the first grounds of rejection.

Appellant argues in the first full paragraph of page 5 of the brief that “in an automobile, the seat and the occupant are held in position within the body of the car, and thus have a fixed shell surrounding both to which the components can be attached” and alleges that “for safety in automobile seat belts, the attachment points need to be on the car, not the chair, so that the seat does not become merely an ejection seat during a collision” However, as detailed in the rejection, the primary reference of Tremblay has a seat belt which is mounted to the upper portions of the armrests of the chair. As much as appellant

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denies this, it is clearly shown in the drawings. One of ordinary skill in the art would have the retraction reel mounted at one of these armrest fixing points, when making the modification put forth in the rejection.

Appellant uses pages 6 and 7 to explain the invention. No arguments are presented on these pages with respect the rejection argued in this portion of the brief, Grounds of Rejection I, which uses 35 U.S.C. § 103(a) and the references of Tremblay in view of Nicholas.

Appellant argues in the second paragraph of page 8 that the "Examiner acknowledges (Final Office Action of 12/17/2008, ¶ 2) that this seat belt does not have any of the features required in claim 24". This is not true. As detailed above, and as detailed in the Final rejection, Tremblay shows all of the claimed elements except for one. Tremblay shows the claimed stairlift chair having a front, back and two spaced lateral sides. Tremblay has the claimed means for attaching the chair with a stairlift rail. Tremblay also has the claimed containment device (strap 122) which comprises a pair of fixing points mounted the spaced sides of the chair and a length of seat belt. And as recited in the latter claims, Tremblay has the belt's fixing points located on the armrests of the chair (claim 10), at the forward edges of the armrests (claim 11), as to be within the sight of a stairlift user (claim 10). The base reference of Tremblay lacks only the retraction reel.

Appellant argues beginning in the third paragraph of page 8 of the brief that "Nicholas describes a seat belt for use in an automobile (not a stairlift chair)" that "this retractor is fixed on the floor, adjacent to the seat and not on a side of the seat" and that "the Examiner relies on the last three lines of column two of Nicholas". The last three lines of column 3 read:

The retractor may be one which travels with the belt, or it may be one which is permanently secured to the ear 41, and thereby remains stationary within the receptacle. (Col. 2, lines 70-71).

Appellant then, in the fifth paragraph of page 8 of the brief, misrepresents the rejection by stating that "The Examiner equates this one very general disclosure with a teaching of ALL of the limitations of the present claims that he acknowledged were missing from Tremblay". Again Tremblay is not missing the limitations alleged by appellant. Tremblay has every limitation except the retraction reel.

At the bottom of page 8 of the brief appellant argues that the "Examiner has offered no evidence of what kind of retractor that travels with the belt was known at the time of the Nicholas patent". This is not true. The rejection clearly states that the retractor (40) of Nicholas is disclosed as being a spring loaded, automatic retraction mechanism operative upon release of the belt and that a number of these are on the market, such that the particular construction of the retractor is not part of the invention, see

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column 3, lines 3-8 of Nicholas. Even forty years ago, these spring loaded retraction reels were so well known that this very early seat belt patent did not need to show the features of the conventional reel.

Appellant argues in the first paragraph of page 9 of the brief that "The Examiner has failed to offer any reasoning as to why a person skilled in the art would assume or understand from Nicholas that the limitations of the claims, in which the fixing component is part of the housing (see claim 19 or "formed integral with the housing" of claim 24), inter alia, were taught by this statement. This argument is not understood. Claim 19 recites "a housing comprising a fixing component" and Nicholas discloses a housing (40) with a spring located retractor therein and fixing means (41). Nicholas clearly discloses a "housing comprising a fixing component" as recite in the lines 1 and 2 of claim 19. Combining this housing with the chair/strap of structure of Tremblay has a reel carrier "engageable with a fixing point on a lateral side of the chairlift chair via said fixing component" as recited in lines 2 and 3 of claim 19. With respect to claim 24, appellant has misrepresented the subject matter of the claim. Claim 24 does not recite that the fixing component is *formed* integrally with the housing. Claim 24, line 7 has the reel carrier "having a fixing component integral with the housing". Claim 24 does not use the term "formed integrally", but uses the much broader term of "integral". Any two items become integral upon being attached to one another. The terms "integrally formed" and "integral" have always been considered completely different in claim interpretation.

Appellant argues in the second paragraph of page 9 of the brief that "Nicholas provides no requirement or teaching for a retractor housing that directly interacts with the fixing point when the belt is buckled. This argument is not understood. It is unclear as to how the appellant is using the term "interacts" within the argument. It appears that the appellant is arguing a limitation found in claim 3. Claim 3 is not grouped with the claims appellant is discussing within this Ground I, of the Grounds of Rejection. Page 9 is still arguing the first grounds of rejection. Claim 3 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Tremblay in view of Nicholas, as applied above to claim 24, and further in view of Gray, which is Grounds II of the rejection, not Ground I. Adding a retraction reel to the strap (122) of have the retractor travel with the belt, as acknowledged by appellant in the appellant's quote of Nicholas on page 8 of the brief. During this "travel" of the retractor, the retractor mounted on an end of the strap would be moved to and then affixed to one of the fixing points on the chair. This is the manner that the traveling retractor of Nicholas would be used with the strap (122) of Tremblay as modified shows the basic claimed stairlift chair and seat belt.

Appellant argues in the third paragraph of page 9 of the brief that "Nothing in Nicholas shows attachment of the belt to a chair". However the rejection clearly states that the base reference of Tremblay has a seat belt mounted to the armrests of the chair. Both references do not have to show the

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belt mounted to a chair, when the primary reference has this feature, and the rejection clearly includes this feature as part of the structure disclosed within the primary reference.

Appellant argues in the fourth paragraph of page 9 of the brief that "The only reasoning for the combination of these references provided by the Examiner is a simple conclusory statements that a seat belt is a seat belt and that the combination renders all limitations of the claims obvious". However, the incorporation of retractable reels on seat belts is so well known, that a teaching of one on any type of seat belt would have made it obvious to one of ordinary skill at the time the invention was made by applicant, to use a retraction reel for other types of seat belts. As adjustability is desirable for other types of seat belt, the combination would have yielded predictable results.

Appellant argues in the last two paragraphs of page 9 of the brief that "the Examiner has failed to address all limitations of the claims in the manner that they have been presented, has failed to present clear rationale supporting the combination, and has therefore failed to maintain a prima-facie case for obviousness against the claims". However, as detailed above, appellant has misrepresented the rejection, as the rejection states that Tremblay has everything element in claim 24 except for the reel for retracting the seat belt (122). Clearly the use of retraction reel for a seat belt is well known. Every car has one. Also, the rejection clearly lists two rationales for supporting the combination. The rejection states that a retraction reel would have the strap (122) of Tremblay adjustable. The rejection also states that a retraction reel would have the strap (122) of Tremblay stored when not in use. Appellant's statement that the rejection fails to present rational for supporting the combination is not understood.

Appellant argues at the paragraph starting at the bottom of page 9 and extending to the top of page 10 of the brief that the "only reason for one skilled in the art to combine Nicholas' three line disclosure of a traveling retractor with Tremblay's seat belt comes in hindsight" and that retractors for "retractors for car seat belts are likely to have inertial mechanisms" which would be undesirable for a chair occupant. However it is unclear as where the appellant is pulling this *inertial mechanism* requirement from. Appellant has previously argued that the reel mechanism of Nicholas was not understood. Now the appellant is saying that it is an inertial mechanism. However as discussed above, the rejection clearly states that the retractor (40) of Nicholas is disclosed as being a spring loaded, automatic retraction mechanism. There is no mention of an inertial mechanism. As discussed above, a number of these are on the market, such that the particular construction of the retractor is not part of the invention, see column 3, lines 3-8 of Nicholas. Nicholas also lists U.S. Patent No. 3,171,688 as a related application, see column 1, lines 3-6, and this patent shows a simple spring loaded seat belt retraction reel.

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On page 10 of the Brief Appellant states that "Applicants remind the Board that "[a] patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art." KSR Int'l v. Teleflex Inc., 127 S.Ct. 1727, 1741 (2007)". However, appellant is misrepresenting the KSR quote. This phrase is found twice within the KSR opinion. The first occurrence of the full quote reads **"The TSM test captures a helpful insight: A patent composed of several elements is not provide obvious merely by demonstrating that each element was, independently known in the prior art."** The KSR case was commenting on TSM test and the Federal Circuit's application of the test. The KSR case was actually quite critical of the use of the TSM test and states, just after appellant's partial quote, KSR states that **"Helpful insights, however, need not become rigid and mandatory formulas. If it is so applied, the TSM test is incompatible with this Court's precedent"**. Appellant's recitation of the above partial quote from KSR misrepresents the KSR teachings. The overall teachings of the KSR case have been quite the opposite of the partial sentence misquoted by Appellant. In the discussion of the TSM test, the KSR court opinion states "It is common sense that familiar items may have obvious uses beyond their primary purposes, and a person of ordinary skill often will be able to fit the teaching of multiple patents together like pieces of a puzzle". The second occurrence of appellant's phrase from KSR follows later within the opinion and states:

When it first established the requirement of demonstrating a teaching, suggestion, or motivation to combine known elements to show that the combination was obvious, the Court of Customs Appeals captured a helpful insight. See *Application of Bergel*, 292 F.2d 955,956-957 (1961). As is clear from cases such as *Adams*, a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the art.

However a full study of that portion of the opinion in KSR shows that the appellant's partial quote is discussed in the subsequent paragraphs as not being "good" law. KSR contradicts the logic of appellant's partial quote by stating:

In the years since the Court of Customs and Patent Appeals set forth the essence of the TSM test, the Court of Appeals no doubt has applied the test in accord with these principles in many cases. There is no necessary inconsistency between the idea underlying the TSM test and Graham analysis. But when a court transforms the general principle into a rigid rule the limits the obviousness inquiry, as the Court of Appeals did her, it errs.

The flaws in the analysis of the Court of Appeals relate for the most part to the courts narrow conception of the obviousness inquiry reflected in its application of the TSM test.

Thus appellant is trying use a phrase out of context from the opinion, as the quoted phrase is part of a flawed TSM test discussed within KSR. The most often quoted lines from KSR recites "The combination of familiar elements according to known methods is likely obvious when it does no more than yield predictable results". Clearly the addition of the retraction reel of Nicholas onto the seat belt of Tremblay yields predictable results.

Appellant also uses additional court citations to discuss obviousness and motivation requirements for a rejection. However, as discussed above, despite the negations made by appellant, the

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rejection does include two motivations for taking the retractable reel of Nicholas and using with the seat belt of Tremblay. And, as discussed above, despite the negations made by appellant, the rejection does include each and every limitation of the claims in the manner presented.

Appellant's page 10 of the brief begins Grounds II of the rejection by stating that claims 3 and 4 "are dependent upon claim 24" and "Once the rejection to claim 24 is overcome, so too shall the rejections to these dependent claims". The only argument made by appellants which is specific to the second rejection is regarding the alleged "non-analogous nature of this tertiary reference as well as the secondary reference (e.g. Nicholas)". These claims appear to stand or fall together with claim 24, as the argument against them is the same "non-analogous art" as put forth as one of the arguments against claim 24. However it should be noted that Gray shows a seat belt retraction device that is similar to the retraction device of Nicholas which "travels" with one end of the seat belt. Note that Gray has two reels (60 and 70) which are of the type which "travel" with the end of the belt. It clearly shows a locking means (actuator assembly 82) operable to lock the position of the belt reel by the act of engaging the reel carrier to the fixing point (44). One of ordinary skill at the time the invention was made by applicant would have considered this reference as analogous art.

Appellant's arguments with respect to Grounds III of the rejection on page 11 of the brief states that claims 7 and 8 are also "dependent upon claim 24" and if "the rejection to claim 24 is overcome, so too shall the rejections to these dependent claims". Putting forth the only arguments specific to this rejection a statement to "incorporate by reference the argument provided earlier that the non-analogous nature of this tertiary reference as well as the secondary reference (e.g. Nicholas)". Again, it appears that these claims stand or fall together with claim 24, or with the appellant's "non-analogous" art reasoning.

Appellant's arguments with respect to Grounds IV of the rejection on pages 11 and 12 of the brief state that "Applicants arguments with regard to the rejections of claim 24 over the combination of Tremblay and Nicholas are incorporated into this section herein by reference" as to repeat the argument that appellant is relying on claim 24 for patentability. Appellant separately argues the rejection of Grounds IV on page 12 of the brief by stating that "As discussed above, Nicholas does not disclose a reel carrier housing combination like that of the claims" without putting forth any new reasoning for the statement. Appellant further states that "Berton discloses a shoulder belt and a lap belt combination and that each is "closed by a separate buckle mechanism 19 in the middle of the belt" so that "adding the shoulder belt of Berton to the combination of Tremblay and Nicholas would not result in the claimed invention, since there is no teaching in Berton et al of the shoulder belt being even attached to a common buckle with the lap belt". However appellant is misrepresenting the rejection, the structures shown in Berton et al, and the limitations recited in claims 13 and 19. Berton et al shows a second belt (21/22)

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which is a shoulder belt. The shoulder belt (21/22) is attached to both ends of the lap belt (16/17). Providing the lap belt (122) of Tremblay with the shoulder belt of Berton et al would have the shoulder belt extending to both ends of the lap belt (122) of Tremblay. As the lap belt (122) has been modified to include a retraction reel at one end, attaching a shoulder belt to both ends of the lap belt, as taught by Berton et al, has one end of the shoulder belt attached to the retraction reel housing, as recited in the claims. Thus, the combination of references used in the rejection does teach all of the elements of broadly recited in claims 13 and 19. The shoulder belt (21/22) of Berton et al could be added to the modified seat belt (122) of Tremblay, with or without its intermediate buckle (19), and still read on the claim limitations for the second belt within these claims.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

In conclusion, contrary to appellant's arguments, a full reading of the first grounds of rejection has the Tremblay reference including all of the claimed elements except for the retraction reel for the seat belt. A full reading of the rejection also has it including rationale for providing a retraction reel based upon the disclosure of Nicholas. The rejection clearly states two motivations for combining the references, adjustability of the belt, and storage of the belt when not in use. Appellant's argument for patentably relies on whether or not the seat belt on the chair lift of Tremblay and the seat belt of Nicholas are analogous art. As both references are seat belts designed for the same purpose, passenger safety, they are both addressing the same problems, and are considered as analogous art. One of ordinary art in the stairlift chair art would also have knowledge of retraction reels for seatbelts, as every modern car includes a seatbelt and a retraction device. Also, contrary to appellant's arguments, a full reading of the KSR opinion has it describing appellant's quotation as part of the "flawed TSM test" as being too rigid, with the KSR opinion actually supporting the type combination made in the rejections, as being obvious as the combination yields predictable results.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Thomas J. Brahan/
Primary Examiner
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Conferees:

John Q. Nguyen /JN/

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Heather Shackelford /hcs/